

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 BENEDICT EDMUND DEL ROSARIO,

11 Petitioner,

12 v.

13 PATRICK GLEBE,

14 Respondent.

CASE NO. C13-0001-JCC

ORDER DENYING 28 U.S.C. § 2254  
PETITION AND DISMISSING CASE  
WITH PREJUDICE

15 This matter comes before the Court on the Report and Recommendation of the Honorable  
16 Brian A. Tsuchida, U.S. Magistrate Judge, to deny Petitioner Benedict Edmund Del Rosario's  
17 28 U.S.C. § 2254 petition for a writ of habeas corpus (Dkt. No. 18) and Rosario's objections  
18 thereto (Dkt. No. 19). Having thoroughly considered the petition, the Report and  
19 Recommendation, Rosario's objections, and the balance of the record, the Court hereby  
20 ADOPTS the Report and Recommendation, DENIES the petition, and DISMISSES this case  
21 with prejudice for the reasons explained herein.

22 The Report recommends denying Rosario's petition because it is time-barred and because  
23 Rosario does not qualify for equitable tolling of the one-year limitations period. *See* 28 U.S.C.  
24 § 2244(d)(1); *United States v. Battles*, 362 F.3d 1195, 1197 (9th Cir. 2004). In his objections,  
25 Rosario asks the Court either to hold a hearing on his petition or to issue a certificate of  
26 appealability. He reiterates his contention on the merits that his "restraint is unlawful." However,

1 he advances no argument for why his petition is not time-barred or why he is eligible for  
2 equitable tolling, and thus fails to put the Court on notice of any potential errors in the Report—  
3 including its recommendations that the Court not hold an evidentiary hearing and deny a  
4 certificate of appealability. Rosario has not “demonstrate[d] that reasonable jurists would find  
5 the [Report’s] assessment of [Rosario’s] claims debatable or wrong.” *Miller-El v. Cockrell*, 537  
6 U.S. 322, 338 (2003) (quotation marks omitted); *see also Schriro v. Landrigan*, 550 U.S. 465,  
7 474 (2007) (“if the record . . . precludes habeas relief, a district court is not required to hold an  
8 evidentiary hearing”).

9 Accordingly, the Court ADOPTS the Report and Recommendation (Dkt. No. 18);  
10 DENIES Rosario’s 28 U.S.C. § 2254 habeas petition as time-barred; DISMISSES this case with  
11 prejudice; and DENIES issuance of a certificate of appealability. The Court respectfully  
12 DIRECTS the Clerk to send a copy of this order to the parties and to Judge Tsuchida.

13 DATED this 5th day of June 2013.

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John C. Coughenour  
UNITED STATES DISTRICT JUDGE